Federal Court  Cour fédérale

Date: 20210716

Docket: IMM-5665-19

Citation: 2021 FC 754

Ottawa, Ontario, July 16, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

HUSSEIN HAMUD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Hussein Hamud, is a Syrian citizen who arrived in Canada as a temporary foreign worker in 2014 accompanied by his wife and children. In a decision dated July 25, 2019, his permanent residence application was refused. The visa officer [Officer] concluded Mr. Hamud was inadmissible to Canada on grounds of serious criminality pursuant to paragraph 36(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Officer

found, on a balance of probabilities, that Mr. Hamud had assaulted his now ex-wife with a weapon causing bodily harm while the couple was in Syria in 2016.

[2] Mr. Hamud now seeks judicial review of the Officer's July 25, 2019 decision pursuant to section 72 of the IRPA. He challenges the decision on two grounds:

A. He submits the process was unfair because (1) the Officer failed to notify him that inadmissibility under paragraph 36(1)(c) of the IRPA was being considered; (2) the notice he was provided omitted crucial details and that no response was provided to a request for further information; and (3) the Officer unfairly relied on extrinsic evidence that was not disclosed; and

B. He argues the decision is unreasonable because the Officer (1) did not properly address evidence submitted by Mr. Hamud that contradicted the Officer's conclusions; (2) unreasonably relied on a finding of guilt in a separate criminal proceeding in assessing the credibility of his alleged criminal conduct in Syria; and (3) failed to review or consider credible exculpatory evidence despite being notified of it.

[3] For the reasons that follow, the Application is denied.

II. Background

[4] Mr. Hamud and his wife returned to Syria in January of 2016 to dispose of property they owned in the country. During this trip, the two decided to divorce.

[5] Mr. Hamud's wife reports that on the night of January 20, 2016 Mr. Hamud committed an act of serious criminality by restraining and beating her while brandishing a gun, a tin of acid, and a knife. She reported the incident to Syrian police who investigated and took photos of the injuries inflicted. The Syrian police report states that Mr. Hamud was not apprehended as he had departed Syria.

[6] Mr. Hamud denies any involvement in the alleged assault, stating that he was not even in Syria on the evening of January 20, 2016, having left earlier that day for Lebanon. He reports that after leaving on January 20, 2016, he did not have any contact with his wife for the rest of the trip and that he has no knowledge of how the reported injuries were sustained.

III. Decision under Review

[7] On November 29, 2018, the Officer sent a procedural fairness letter [PFL] to Mr. Hamud identifying the Officer's inadmissibility concerns arising from the reported incident in Syria. The letter states:

> …you appear to be inadmissible to Canada on grounds of criminality pursuant to the provisions of section A36 of the Immigration and Refugee Protection Act.
>
> **Paragraph 36(2)(c) of the *Immigration and Refugee Protection Act* renders inadmissible a foreign national on grounds of criminality for committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.**
>
> I have evidence that leads me to believe that in January 2016, you committed the following acts in Syria, that were offences in the place where they were committed, and that if committed in Canada, would constitute offences under an Act of Parliament punishable by a maximum term of imprisonment of at least 10

> years: **Assault with a weapon and assault causing bodily harm**
> [Emphasis in original].

[8] The PFL references IRPA paragraph 36(2)(c), inadmissibility on grounds of criminality but does not make reference to IRPA paragraph 36(1)(c), inadmissibility on grounds of serious criminality. However, the offence cited in the PFL and upon which the Officer concluded Mr. Hamud was inadmissible—assault with a weapon and assault causing bodily harm—falls within the ambit of IRPA paragraph 36(1)(c).

[9] Mr. Hamud responded to the PFL with a request for a copy of the evidence the Officer was relying on. Mr. Hamud received no response.

[10] In April 2019, Mr. Hamud provided submissions in response to the PFL. The submissions included a copy of the Syrian police report detailing his wife's allegations and a 2019 Syrian police report showing he had no convictions in Syria. He also included a 2016 affidavit he had sworn in a separate proceeding in Saskatchewan in which, among other things, he denies having committed the alleged assault in Syria.

[11] In finding Mr. Hamud inadmissible the Officer places "particular weight" on the wife's Syrian police complaint and the photos of her injuries and notes that the credibility of the allegations are enhanced by the fact that Mr. Hamud had been previously found guilty before a Saskatchewan court of having assaulted his wife. The Officer addresses the materials provided by Mr. Hamud in response to the PFL and his statement that "On January 20, 2016, I was in Beirut, Lebanon. My passport is date stamped confirming my physical presence in Beirut." The

Officer notes no copy of the passport relied upon by Mr. Hamud was attached to the submissions. The Officer also concluded that the 2019 Syrian police report indicating no convictions in Syria was not persuasive in the face of the evidence stating the Syrian police had been unable to apprehend Mr. Hamud after the alleged assault in 2016.

IV. Standard of Review

[12] Where issues of procedural fairness arise, strictly speaking, no standard of review is applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). Instead, the Court must consider "whether the procedure was fair having regard to all of the circumstances" (*CPR* at para 54) While this principle is best reflected in the correctness standard of review, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*CPR* at para 56).

[13] The inadmissibility decision is reviewable on the presumptive reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 33 and 53 [*Vavilov*]; *Garcia v Canada (Minister of Citizenship and Immigration)*, 2021 FC 141 at para 5). A reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Vavilov* at para 85).

V. Analysis

[14] I am not persuaded that the process was unfair or that the Officer's decision was unreasonable.

A. *There was no breach of procedural fairness*

[15] The duty of fairness owed a visa applicant generally falls on the lower end of the fairness spectrum (*Rani v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1414 at para 18). While Mr. Hamud acknowledges this, he submits, relying on the *Baker* factors, that in the context of this proceeding he was owed an elevated duty of fairness (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]. He points to: (1) the significant consequences of a finding of inadmissibility for serious criminality; (2) the impact of an inadmissibility finding on someone such as himself who is established in Canada with his children; (3) his legitimate expectation that he would be fully informed of the case against him arising from the Respondent's administrative guidelines; and (4) the Officer's choice to proceed with a PFL, as factors that warrant an elevated duty of fairness in this instance.

[16] The content of the duty of fairness is to be determined in light of all of the circumstances including the statutory, institutional and social context in which a decision is being made (*Baker* at paras 21-22).

[17] In *Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126, a matter where inadmissibility pursuant to section 36 of the IRPA was also in issue, the Court of Appeal states:

> [23] Immigration is a privilege, not a right. Non-citizens do not have an unqualified right to enter or remain in the country. Parliament has the right to enact legislation prescribing the conditions under which non-citizens will be permitted to enter and remain in Canada. As a result, the Act and the Regulations treat citizens differently than permanent residents, who in turn are

> treated differently than Convention refugees, who are in turn treated differently than other foreign nationals. (*Chieu v. Canada (M.C.I.)*, [2002] 1 S.C.R. 84 , at paragraph 57; *Chiarelli v. Canada (M.E.I.)*, [1992] 1 R.C.S. 711 (S.C.C.) at pages 733, 734; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539 at paragraph 46). It is fair to say that compared to other types of non-citizens, foreign nationals who are temporary residents receive little substantive and procedural protection throughout the Act. [Emphasis added.]

[18] While a visa decision will unquestionably have consequences for an applicant, those consequences arise in a context where an applicant has no legal right to permanent residence and has the burden of establishing eligibility. In this respect, the jurisprudence has consistently held the duty of fairness owed is at the lower end of the spectrum (*Patel v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55 at para 10; *Dash v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1255 at para 27; *Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411 at para 23; *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542 at para 15; *Khowaja v Canada (Minister of Citizenship and Immigration)*, 2013 FC 823 at para 38; *De Azeem v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1043 at para 35).

[19] The duty of fairness owed Mr. Hamud in these circumstances was at the lower end of the spectrum. However, Mr. Hamud was entitled to know the case against him and to be provided a full and fair opportunity to respond. I am satisfied that he was.

[20] Turning to the specific fairness issues Mr. Hamud raises, it is evident that the PFL incorrectly identified paragraph 36(2)(c) of the IRPA as the basis for a potential inadmissibility finding. This error did not result in any unfairness to Mr. Hamud.

[21] The Applicant relies on *AB v Canada (Minister of Citizenship and Immigration)*, 2013 FC 134, where it was held that the failure to identify a specific subsection of section 34 of the IRPA was unfair due to the range of different serious scenarios dealt with under the various subsections of section 34. I take no issue with *AB*, but the concern underlying that decision does not arise here. Paragraphs 36(1)(c) and (2)(c) of the IRPA address criminality outside of Canada. The two paragraphs do not encompass a range of different scenarios; they address the same scenario—criminality outside of Canada that constitutes an offence in Canada. In addition, the PFL letter details the specific offences the Officer believed had been committed and identifies those offences as having been committed in Syria in January 2016. This information was sufficient to allow a full and fair opportunity to respond.

[22] Mr. Hamud also argues that because the Officer was in possession of more detailed information, there was duty to disclose those details. This includes, he submits, the details underlying the equivalency analysis undertaken between Syrian and Canadian law. I disagree. While it may have been preferable for the Officer to acknowledge Mr. Hamud's request for additional information, the PFL disclosed sufficient detail to allow Mr. Hamud a full and fair opportunity to respond, which he did.

[23] Finally, Mr. Hamud argues that the Officer was under an obligation to provide him with notice of how evidence of a prior guilty plea to the assault of his former wife in Canada would be used in assessing his application. The Officer was under no such obligation.

[24] Mr. Hamud provided the Officer with his police record. He was well aware that his information was before the Officer. Mr. Hamud was not entitled to receive notice of evidence where he himself had provided it (*Akanniolu v Canada (Minister of Citizenship and Immigration)*, 2019 FC 311 at paras 46-47). Similarly, the Officer was under no obligation to maintain and report a "running score" of the application's weaknesses (*Rahim v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1252 at para 14; *César Nguesso v Canada (Minister of Citizenship and Immigration)*, 2015 FC 880 at para 68; *Tiben v Canada (Minister of Citizenship and Immigration)*, 2020 FC 965 at para 30; *Premaratne v Canada (Minister of Citizenship and Immigration)*, 2011 FC 30 at para 8).

B. *The Officer's decision is reasonable.*

[25] Mr. Hamud argues that the Officer disregarded his affidavit evidence that contradicted the allegation that he had committed serious assault in Syria. Specifically he submits the evidence demonstrates he was not in Syria at the time of the alleged assault and that the Officer's failure to address this contradictory evidence renders the decision unreasonable. He further submits the affidavit evidence benefitted from the presumption of truth and the Officer's failure to make an express finding on the credibility and weight to be given the affidavit evidence was a reviewable error.

[26] The Officer did not overlook or disregard Mr. Hamud's evidence. The Officer details the information considered and reviewed in considering the application in some detail in the GCMS notes making express reference to both the affidavit and Mr. Hamud's argument that he was not in Syria on the reported date of the assault:

> In a copy of the affidavit of the applicant that was submitted to a court in Saskatoon, the applicant…stated that the last time he saw his ex-wife during [their trip to Syria] was on 19/Jan/2016 and that he departed Syria for Lebanon on 20/Jan/2016. He stated that on 19/Jan/2016 he had spoken to his ex-wife about a divorce. Although the representative indicates in the submission that a copy of the Lebanese entry stamp dated 20/Jan/2016 in the applicant's passport has been included in the submission, having reviewed the entirety of the documents provided, I cannot find a record of this copy in the submission.

[27] It is not disputed that the passport page Mr. Hamud relied upon was not in the record. The issue before the Officer was not one of credibility as Mr. Hamud submits. Instead, the issue was one of sufficiency. A decision maker may well conclude the evidence is insufficient where it lacks the detail necessary to convince the decision maker of a certain fact (*Azzam v Canada (Minister of Citizenship and Immigration)*, 2019 FC 549 at para 33). In the absence of the passport page, it was reasonable for the Officer to conclude the Applicant's evidence was insufficient to establish the claimed discrepancy in the timelines.

[28] Mr. Hamud further argues, relying on *Downer v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 45 at paras 63-64 [*Downer*] that having become aware of the missing passport page it was unreasonable for the Officer not to have contacted him to verify its existence. *Downer* does not assist Mr. Hamud. *Downer* dealt with issues relating to the credibility of documentary evidence and a letter that invited the reader to contact the author for further detail. *Downer* does not suggest that a visa officer acts unreasonably by not pursuing, and seeking to fill, an application's evidentiary gaps and shortcomings. In this regard, I am persuaded by the Respondent's submissions—there is no obligation on a visa officer to seek out missing evidence or to verify the existence of evidence not provided by an applicant.

[29] It is also argued that the Officer unreasonably relied on the assault conviction in Canada to bolster the credibility of his wife's allegations particularly in light of the surrounding circumstances, including Mr. Hamud's denial of allegations of violence and the information before the Officer indicating that in the context of the family law dispute the children had been ordered to reside with Mr. Hamud.

[30] The Officer's treatment of Mr. Hamud's guilty plea is intelligible and transparent:

> …the fact that a court in Canada found Mr. Hamud guilty of assaulting his wife in Canada increases the credibility of the evidence before me that appears to demonstrate that, in January 2016, Mr. Hamud committed the acts described in the police report issued by the Jarmana Police Department in Syria.

[31] It was reasonable for the Officer to draw a link between the alleged assault in Syria and the established assault in Canada in assessing the alleged criminality in Syria. The finding is also justified on the record before the Officer. The record contained no evidence explaining the guilty finding itself. The failure to address the question of custody does not render the conclusion unreasonable. A decision maker need not address every argument advanced (*Vavilov* at para 128).

[32] The Applicant submits that further information could have been provided to explain the guilty finding in Canada if he had knowledge of the Officer's intention to rely upon that evidence. I have addressed the fairness arguments above and have concluded that Mr. Hamud was provided adequate notice of the Officer's admissibility concerns. He understood the Officer's concerns and provided a detailed response that addresses, among many other issues, the guilty plea in Canada. The reasonableness of a decision cannot be impugned for failing address

evidence that was not advanced by the Applicant or that the Applicant now wishes had been advanced in greater detail, or given greater emphasis.

[33] Mr. Hamud's arguments essentially reflect disagreement with the assessment and interpretation of the evidence. This disagreement does not render the Officer's decision unreasonable.

VI. Conclusion

[34] The Application is denied. The parties have not identified a question of general importance for certification and none rises.

JUDGMENT IN IMM-5665-19

THIS COURT'S JUDGMENT is that:

1. The Application is denied;

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5665-19
STYLE OF CAUSE:	HUSSEIN HAMUD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 16, 2021
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JULY 16, 2021

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